

Section-by-Section Analysis

Section 1. Short Title

This section provides that this act may be cited as the Commodity Exchange Reauthorization Act of 2005.

Section 2. Contracts Designed to Defraud or Mislead

This section clarifies that CFTC's antifraud authority under Section 4b of the Commodity Exchange Act clearly covers "principal-to-principal" i.e., non-intermediated off exchange futures transactions, including energy transactions. The legislative language used to accomplish this change is identical to the consensus language that CFTC submitted to the Agriculture Committee on June 24, 2005 after it completed consultations with affected groups from the futures, securities and derivatives industries.

Section 3. Criminal and Civil Penalties

This section raises the maximum penalties for manipulating or attempting to manipulate the price of a commodity. The section also clarifies CFTC's existing authority to bring civil and administrative actions under Section 9 of the CEA, including false reporting cases. This latter change is also consensus language that CFTC submitted to the Agriculture Committee on June 24, 2005 after it completed consultations with affected groups.

Section 4. Clarification of Authority

This section consists of language proposed by CFTC to the Agriculture Committee on May 20, 2005 that the CFTC believes are the minimum changes in law necessary to address the recent *Zelener* decision and retail fraud problems.

This section provides that CFTC has jurisdiction over foreign exchange transactions that are offered to, or entered into with, a retail customer; offered or entered into on a leveraged, margined, or financed on a similar basis; and offered or entered into for purposes other than commercial or personal use of such foreign currency. If this test is met, the CEA applies. Also, a new provision is added to ensure that the CEA's antifraud authority applies to all covered retail foreign exchange transactions—e.g., rolling spot or other futures "look-alike" products.

This section also adds language requiring that, for futures commission merchants (FCMs) and broker dealers (BDs) to qualify for the "otherwise regulated" exception to CFTC jurisdiction of their retail foreign exchange activities, each person who participates in the solicitation or recommendation of the transactions must register with the CFTC or SEC, and be a member or associate of the National Futures Association (NFA) or a registered securities association, as applicable. In addition, the provision would no longer permit unregistered affiliates of FCMs and BDs and notice-registered BDs to qualify for the "otherwise regulated" exception to CFTC jurisdiction of their retail foreign exchange transactions.

Section 5. Authorization of Appropriations

This section reauthorizes, subject to funding provided by annual appropriations, the Commodity Futures Trading Commission (CFTC) for five years through fiscal year 2010.

Section 6. Liaison with the Department of Justice

This section provides that CFTC and the Department of Justice shall coordinate civil and criminal investigations and prosecutions of violations of the CEA as appropriate.

Section 7. Single Stock Futures Margining Pilot Program

This section authorizes a two-year portfolio margining pilot program for security futures products that would be eligible to continue beyond this initial period depending upon the conclusions of a report on the pilot program submitted not later than two years after enactment to the House and Senate Agriculture Committees by the Board of Governors of the Federal Reserve System.

Section 8. Broad-Based Index Definitions

This section directs the CFTC and the SEC to exercise existing authority in the CEA provided by the Commodity Futures Modernization Act of 2000 to jointly promulgate a final rule, regulation or order, for additional U.S. listings of futures contracts on broad-based indexes on U.S. debt instruments, other U.S. securities, foreign equities and foreign debt instruments within 180 days of enactment.